UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,866	12/12/2001	Michael Hinnebusch	Hinne-P3-01	4714

28710 7590 03/10/2006

PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO, IL 60680

EXAMINER	
NELSON, FREDA ANN	
ART UNIT	**PAPER NUMBER**
3639	

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/015,866	HINNEBUSCH, MICHAEL	
	Examiner	Art Unit	
	Freda A. Nelson	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 December 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-75* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-75* is/are rejected.

7)☒ Claim(s) *41-42* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The amendment received on December 21, 2005 is acknowledged and entered. Claims 1-4, 6-70 and 72-75 have been amended. No claims have been added. Claims 1-75 are currently pending.

Response to Amendments and Arguments

Applicant's arguments filed December 21, 2005 have been fully considered but they are not persuasive.

In response to the applicant's arguments that there is no teaching of "maintaining said machine-readable instructions as private to the user", the examiner respectfully disagrees. Watterson teaches that "trainer" or "third party" 21 may include: (i) a live human being; or (ii) a stored trainer, such as a website, computer, optical media (e.g., compact disk or digital video disk), visual media, or magnetic media (e.g., videotape, readable disk), an electronic monitoring system, *dynamic computer readable instructions*, interactive and/or dynamic software programs, *computer readable instructions*, and other media and hardware and/or software modules and components, whether or not the trainer is located at treadmill 20 or at some other location (col. 6, lines 61-col. 7, line 3). The examiner believes that once a user is logged on, the machine-readable instructions are private and maintained as long as the user is logged on. Also, because a trainer or third party may include *computer readable instructions, even if a user accesses a trainer, or the trainer accesses the user's exercise program, the instructions are still private while the user is logged on.*

In response to the applicant's arguments that there is no teaching of "translating the first set of signals to form machine-readable instructions", the examiner respectfully disagrees. Watterson et al. teaches that *generally, computer 14 and/or translator device 13, collectively and/or individually are examples of a communicating mechanism, communicating with the interface means (e.g., the input devices of console 22 that gather a signal from the user). In one embodiment, the communicating mechanism enables real-time transmission of a first signal to: a live trainer (e.g., on treadmill 20), a stored trainer (e.g., communication system 18), another user, or a third party 21, for example. The communicating mechanism may also receive a packetized second real-time signal from any of these sources (col. 17, lines 54-64).*

In response to the applicant's argument that there is no teaching of "controlling a second exercise machine with the machine-readable instructions", the examiner disagrees. Watterson teaches *discloses a system where one device is capable of controlling one or more operating parameters of one or more other devices (col. 2, lines 54-56); and the term "device" or "devices" shall refer broadly to any type of apparatus that includes one or more stepper motors, solenoids, or other electrically driven actuators or controllers. Additionally, the term "exercise devices" shall refer broadly to any type of device that takes the form of an exercise machine, including, but not limited to, treadmills, exercise cycles, Nordic style ski exercise devices, rowers, steppers, hikers, climbers, and elliptical or striding exercise devices (col. 6, lines 7-15).*

Claim Objections

1. Claims 41-42 is objected to because of the following informalities:

Claim 41, line 3, insert "of" after enlarging;

Claim 42, line 3, "selectably" should be "selectable"; and

Claim 42, line 3, insert "of" after enlarging.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> **The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

2. Claims 1, 4-5, 15-16, 27 and 41-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the user" in lines 8 and 9, respectively. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the machine-readable signals" in lines 12-13. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the exercise machine" in lines 14-15. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the user" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the user" in line 2. There is insufficient antecedent basis for this limitation in the claim

Claim 15 recites the limitation "the user" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "the user" in line 3. There is insufficient antecedent basis for this limitation in the claim

Claim 27recites the limitation "the exercise machine" in line 2. There is insufficient antecedent basis for this limitation in the claim.

As for claims 41-42, the examiner is unable to determine what the applicant is claiming by the claim language "selectably enlarging the output".

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-11, 14-40, 43-55, 57-59, 61-62, 67, and 69-73 are rejected under 35 U.S.C. 102(b) as being anticipated by Watterson et al. (Patent Number 6,458,060).

3. As for claim 1, Watterson et al disclose a method for creating a personalized exercise routine, the method including:

forming machine-readable instructions corresponding to a personalized exercise routine (col. 1, lines 18-21) {a system and method for providing improved exercise devises in combination with other users, and/or a live or stored trainer via a communications network};

protecting said machine-readable instructions as private to the user (col. 35, line 67 through col. 36, line 8) {once all the necessary information is gathered, login-registration module 302 assists the user in defining a login user identification number (user ID) and password that are unique to the particular user, as depicted by block 336, wherein upon defining the user password and user ID communication module 254 stores the information within a memory of communication module 254 and optionally

user module 252. The user is subsequently asked to login to communication module 254};

maintaining said machine-readable instructions as private to the user (col. 35, line 67 through col. 36, line 8) {once all the necessary information is gathered, login-registration module 302 assists the user in defining a login user identification number (user ID) and password that are unique to the particular user, as depicted by block 336, wherein upon defining the user password and user ID communication module 254 stores the
information within a memory of communication module 254 and optionally user module 252. The user is subsequently asked to login to communication module 254}; and (col. 34, lines 6-13) {when the user activates, through user interface 262, stop/pause button 78 (FIG. 6), control module 274 disconnects the user from communication module 254; and control module 274 clears the temporary data file stored in storage module 224 of user module 252 and may also clear the temporary data files stored in communication module 254 that relate to the particular user. In this way, control module 274 prepares user module 252 and communication
module 254 for use by subsequent users};

storing the personalized exercise routine formed in the machine-readable instructions in a memory device (col. 10, lines 17–31; FIG. 6);

retrieving the personalized exercise routine formed in the machine-readable signals from the memory device (col. 10, lines 17–31; FIG. 6); and
user-triggered engaging of the machine-readable instructions to control the exercise machine in carrying out the personalized exercise routine (col. 10, lines 17–31 and FIG. 6) {by activating the iFit.com button 82 a signal is transmitted to communication system 18 to create a connection thereby allowing treadmill 12 to receive signals representative of exercise programming from communication system 18 wherein the connection with communication 18 enables the user to obtain the services of a stored trainer or a personal trainer to perform programming, ask questions, download or access programming materials, surf the web, gather and send e-mails, listen to audio programming, view video programming, review and update user information and statistics, purchase exercise programming, equipment, and materials, update exercise device software and operating parameters, research exercise materials, and the like}.

As for claim 2, Watterson et al disclose the method of claim 1, wherein the forming machine-readable instructions includes the steps of:
forming a first set of signals corresponding to the exercise routine carried out on a first machine (col. 9, lines 41-46 and FIG. 6) {the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18, and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12; and translating the first set of signals to form the machine-readable instructions (col. 17, lines 54-58) {generally, computer 14 and/or translator device 13, collectively and/or individually are examples of a communicating mechanism, communicating with the interface means (e.g., the input devices of console 22 that gather a signal from the user); and (col. 33, lines 63-66) {control module 274, may

automatically disconnect data communication between user module 252 and communication module 254 when the movable element of exercise module 264 is stopped by the user}.

As for claim 3, Watterson et al. disclose a method of creating a personal exercise routine, the method including:

providing at least one user interface to create a first set of signals corresponding to a personal exercise routine on a first exercise machine (col.3, lines 50-62; abstract); translating the first set of signals to form machine-readable instructions (col. 17, lines 54-58) {generally, computer 14 and/or translator device 13, collectively and/or individually are examples of a communicating mechanism, communicating with the interface means (e.g., the input devices of console 22 that gather a signal from the user)}; and

controlling a second exercise machine with the machine-readable instructions in carrying out the personal exercise routine on the second exercise machine (col.3, lines 50-62; abstract) {an exercise device configured to enable a user to interact with a trainer in real-time communication, comprises: (i) an exercise mechanism comprising a movable element; (ii) one or more user interface devices, that communicates with the exercise mechanism and gathers a first real time signal from the user; (iii) a communicating mechanism that communicates with the interface device and enables real-time transmission of the first signal to the trainer and receives a packetized second real-time signal; and wherein the second real time signal may comprise a variety of signals, such as control signal and/or audio and visual signals; and a processor, responsive to a control signal is configured to control the operating parameters of the exercise mechanism in real-time}.

As for claim 5, Watterson et al. disclose the method of claim 1, further including the steps of: forming a profile of the user; and protecting the profile of the user as private to the user, along with said machine-readable signals (col. 35, lines 51-61) {that login-registration module 302 may gather user's name, age, sex, type of exercise equipment being used, and various other data unique to the user; and login-registration module 302 may present the user with multiple questions to obtain statistical information regarding the user's background, education, work experience, income, hobbies and other related information to aid operators of communication module 254 and system 250 in providing greater instructional information to the user}.

As for claim 6, Watterson et al. disclose the method of claim 3, further including the steps of: forming a user profile; and protecting the user profile as private to a user, along with said machine-readable signals (col. 35 lines 62-64) {information is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user}; and (col.38, lines 48-60 and FIG. 12) {communication module 254 may optionally include a consumer purchase module 310 which enables a user to make purchases online}.

As for claims 7 and 48, Watterson et al. disclose the method of claim 3, wherein said forming machine-readable instructions includes: programming a cardiovascular exercise as the exercise routine on a personal computer; and further including: communicating signals corresponding to the exercise routine over a network to said second exercise machine (col. 44, lines 19-23; FIGS. 14 and 19) {in the event that only audio program session is desired, the user initially selects the type of equipment that the program is to be used, such as, but not limited to treadmills, cycles, steppers, hikers, climbers, Nordic style devices, ellipticals, and the like; and (col. 2, lines 51-53) {an exercise system that enables a user to access exercise equipment and equipment from a variety of locations}.

As for claim 8, Watterson et al. disclose the method of claim 3, wherein said step of forming machine-readable instructions includes:

accessing, via a virtual private network, a web-accessible library of modifiable preprogrammed routines (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases; and

modifying one of said preprogrammed routines (col. 39, lines 43-45 and FIG. 16) {that each user and/ or trainer may save unique exercise programs created by the user and/or trainer within data storage 390 accessible by mailbox module 386}.

As for claim 9, Watterson et al. disclose the method of claim 3, wherein said step of forming machine-readable instructions includes:
selecting a type of cardiovascular fitness equipment as the second exercise machine, and specifying a duration of an exercise routine, a number of time intervals, an exercise intensity, and a speed for each of the interval (col. 3, lines 50-57) {it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving
this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer}.

As for claim 10, Watterson et al. disclose the method of claim 9, wherein said step of storing includes: storing on a memory means transported to said exercise machine to enable reading by said exercise machine in connection with said retrieving step (col. 10, lines 17–31 and FIG. 6) {by activating the iFit.com button 82 a signal is transmitted to communication system 18 to create a connection thereby allowing treadmill 12 to receive signals representative of exercise programming from communication system 18. The connection with communication 18 enables the user to obtain the services of a stored trainer or a personal trainer to perform programming, ask questions, download or access programming materials, surf the web, gather and send e-mails, listen to audio programming, view video programming, review and update user information and statistics, purchase exercise programming, equipment, and materials,

update exercise device software and operating parameters, research exercise materials, and the like}.

As for claim 11, Watterson et al. do not expressly disclose the method of claim 12, wherein said step of storing includes storing by making an addition to a library of routines (col. 31, line 55-col. 32, line 12).
However, it is old and well known in the computer art to store additional routines or files in a library. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exercise device of Watterson et al. to include the library so users could access and store exercise routines.

As for claim 14, the fact of obtaining, via a communication over a network with a user computer an agreement to abide by gym rules is nonfunctional descriptive matter. It is not functional interrelated with the useful acts of the claimed invention and thus will not serve as limitation. The steps of accessing and engaging the machine-readable instructions to control the exercise machine in carrying out the personal exercise routine would be performed the same regardless of whether the equipment is in a gym or a home. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack, 703 F .2d 1381, 1385, 217 USPQ 401,404 (Fed Cir. 1983); In re Lowry, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).* Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the gym membership limitations because such data does not functionally relate to the steps in the method claimed and does not patentably distinguish the claimed invention.

As for claims 15-16, Watterson et al. disclose the method of claim 5, wherein said step of forming a profile includes forming a profile including a charge card and authorization for use of the card (col. 35 lines 62-64) {information is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user}; and (col.38, lines 48-60 and FIG. 12) {communication module 254 may optionally include a consumer purchase module 310 which enables a user to make purchases online}.

As for claim 17, Watterson et al. disclose the method of claim 3, further including the step of communicating at least some personal profile data between computer systems of different gyms (col. 2, lines 50-55; col. 36, line 61-66) {another object of the present invention is to provide an exercise system that enables a user to access various exercise equipment and information from a variety of locations}.

As for claims 18-19, Watterson et al. disclose the method of claim 15, further including the step of carrying out an on line purchase from the exercise machine while exercising (col. 35 lines 62-64) {information is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user}; and (col.38, lines 48-60 and FIG. 12) {communication module 254 may

optionally include a consumer purchase module 310 which enables a user to make purchases online}.

As for claim 20, Watterson et al. disclose the method of claim 3, further including forming a set of exercise routines that use different types of exercise machines, said set including said personalized exercise routine (col. 10, lines 32-39 and FIG. 6) {activation of the communication system 18 enables exercise devices to have the potential of being controlled during an exercise program by a third party}.

As for claim 21, Watterson et al. disclose the method of claim 3, further including providing a control for at least one type of media including video, TV, e-mail, stock prices, news, horoscope, hobby information, Internet media, or an electronic magazine, the control being stored in a profile stored in a profile of the user (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}.

As for claim 22, Watterson et al. disclose the method of claim 21, wherein the providing a control is carried out with two of the media (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}.

As for claim 23, Watterson et al. disclose the method of claim 21, wherein the providing a control is carried out with three of the media (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}.

As for claim 24, Watterson et al. disclose the method of claim 23, further including implementing the control by displaying media at said second exercise machine (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}.

As for claim 25, Watterson et al. disclose the method of claim 1, wherein said forming is carried out using a personal computer and said retrieving includes downloading to said exercise machine (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}; (col. 39, lines 43-45 and FIG. 16) {each user and/ or trainer may save unique exercise programs created by the user and/or trainer within data storage 390 accessible by mailbox module 386}.

As for claim 26, Watterson et al. disclose the method of claim 1, further including the step of using a virtual private network to provide access to a host system used in said downloading (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}.

As for claims 27-28, Watterson et al. disclose the method, further including providing a browser interface presented at said exercise machine to control Internet communication (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}.

As for claims 29-30, Watterson et al. disclose the method of claim 27, further including the step of communicating the machine-readable signals into a controller between the Internet and the exercise equipment (col. 10, lines 32-39 and FIG. 6) {activation of the communication system 18 enables exercise devices to have the potential of being controlled during an exercise program by a third party}; and (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}.

As for claims 31 and 43, Watterson et al. disclose the method of claim 5, further including the step of controlling with said profile output to a display device and a speaker jack at the exercise equipment (col.13, lines 18-27) {control panel 22 includes multiple video output devices 94 wherein the Video output device may allow a user to watch various types of entertainment and/or surf the internet, while receiving images representative of the exercise profile that they are following whether, periodically, upon activation of a user control, or the like}; and (col.13, lines 28-40) {control panel 22 includes an audio output device 96, such as a hardwired and wireless speakers}.

As for claims 32-33, Watterson et al. disclose the method of claim 6, further including the step of controlling with said profile interaction with Internet communication while exercising by use of a device from the group consisting of a video game joystick on said exercise equipment and a flexible touch pad on the handles of the equipment (col.12, lines 31- 40) {panel 22 may include an integrally formed mouse 100, a keyboard jack 102 for an external keyboard 103, a controller port 104 for receiving one of a variety of games controllers, an integrally formed mouse 100, a touch sensitive video display, and various other ports, jacks, or the like to receive various other external components}.

As for claim 34, Watterson et al. disclose the method of claim 33, wherein said hands-free programming includes selectable the content and presentation format

coordinated with timing of the exercise routine (col. 37, lines 33–44; FIGS. 1 and 6) {if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92}.

As for claims 35-36, Watterson et al. disclose the method, further including the step of monitoring and heart rate with a sensor at the equipment and monitoring speed and intensity of the exercise routine; and storing said heart rate, speed, and intensity (col. 18, line 64 to col. 19, lines 1-4 and FIG. 8) {interface 190 is configured to transceive audio and visual signals of the user exercising, data and information about the user such as, heart rate, blood pressure, and the like that has been gathered by one or more health monitoring devices }.

As for claim 37, Watterson et al. disclose the method of claim 37, further including the step of communicating signals corresponding to said heart rate, speed, and intensity in an Internet communication for retrieving, manipulating, displaying, and storing at a user computer (col. 37, lines 33–44; FIGS. 1 and 6) {if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92}; and (col. 7, lines 33-37) {the exercise profile of the intensity of various exercise criteria is displayed continually or periodically to the user during the performance of the programming}.

As for claims 38-39, Watterson et al. disclose the method of claim 3, further including the step of utilizing a calendar function to schedule use of the exercise machine; and utilizing a calendar function to schedule use of a group of pieces of exercise equipment such that the routine is carried out on said pieces of equipment (col. 40, lines 9-16) {in one alternate embodiment, calendaring module 384 is linked with private room 394 such that upon scheduling a one-on-one exercise program, a private room is automatically scheduled for the user; and additionally, calendaring module 384 may automatically send a message to the users mailbox, thereby providing the user with information regarding the particular private room scheduled and a reminder of the schedule time}.

As for claim 40 and 61, Watterson et al. disclose the method of claim 3, further including the step of logging on to a virtual private network from a personal computer to obtain data enabling formation of said exercise routine (col. 10, lines 17–31 and FIG. 6) {by activating the iFit.com button 82 a signal is transmitted to communication system 18

to create a connection thereby allowing treadmill 12 to receive signals representative of exercise programming from communication system 18 wherein the connection with communication 18 enables the user to obtain the services of a stored trainer or a personal trainer to perform programming, ask questions, download or access programming materials, surf the web, gather and send e-mails, listen to audio programming, view video programming, review and update user information and statistics, purchase exercise programming, equipment, and materials, update exercise device software and operating parameters, research exercise materials, and the like}.

As for claim 44, Watterson et al. disclose the method of claim 6, further including the step of specifying parameters of the exercise routine including type of equipment, duration of session, intensity level, and pattern of variation of the intensity level (col. 37, lines 33–44; FIGS. 1 and 6) {if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92}; and (col. 7, lines 33-37) {the exercise profile of the intensity of various exercise criteria is displayed continually or periodically to the user during the performance of the programming}.

As for claim 45, Watterson et al. disclose the method of claim 6, further including the step of permitting, at discretion of the user, access to an exercise report, and storing the report in the profile (col. 37, lines 33–44; FIGS. 1 and 6) {if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92}; and (col. 7, lines 33-37) {the exercise profile of the intensity of various exercise criteria is displayed continually or periodically to the user during the performance of the programming}.

As for claims 46-47, Watterson et al. disclose the method, wherein said step of storing is carried out by storing in said profile (col. 39, lines 43-45 and FIG. 16) {each user and/ or trainer may save unique exercise programs created by the user and/or trainer within data storage 390 accessible by mailbox module 386}.

As for claim 49, Watterson et al. disclose the method of claim 6, further including digitally specifying the second exercise machine so that exercising is carried out at a location corresponding to at least one of a home, a gym, a spa, an exercise facility of an apartment complex, and a hotel (col. 44, lines 19-23; FIGS. 14 and 19) {in the event that only audio program session is desired, the user initially selects the type of equipment that the program is to be used, such as, but not limited to treadmills, cycles, steppers,

hikers, climbers, Nordic style devices, ellipticals, and the like; and (col. 2, lines 51-53) {a exercise system that enables a user to access exercise equipment and equipment from a variety of locations}.

As for claims 50, Watterson et al. disclose the method of claim 1, further including controlling access, to said exercise machine, via a virtual private network of computer devices corresponding to exercise machines by assigning a user identification name and a password to each device (col. 9, lines 41-46 and FIG. 6) {that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18 and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12}.

As for claim 51, Watterson et al. disclose the method of claim 6, further including the step of maintaining a business operations database for use in carrying out the translating (col. 9, lines 41-46 and FIG. 6) {that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18 and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12}; and (col. 38, lines 55-67) {alternatively, consumer purchase module 310 may include a database, whether relational, hierarchal, or the like that has stored specifications, pricing guides, illustrative images of exercise devices and products, and the like, that a user may search through to find the necessary or desired exercise equipment. Additionally, consumer purchase module 310 may include the necessary hardware and/or software modules to gather and store billing and purchase information from the user or alternatively, consumer purchase module 310 may communicate with a centralized accounting module that performs the necessary functions typically known by one skilled in the art related to accounting, billing, purchasing, sales, and the like activities}

As for claims 52-53 and 70-71, Watterson et al. disclose the method, further including forming a client profile database containing for each of a plurality of users (col.6, lines 22-28) {following the logging in procedure, the user is given access, as depicted by block 340, to communication module 254 to the specific level that they are allowed, based upon their responses to the various questions asked during the login procedure wherein, for example, if a user defines the exercise device as a treadmill located at home, the user may be limited to only the treadmill related web pages of iFit.com website 300; and similarly, if a user does not define any account information the user may be limited to only the free web pages and information available thereon, while being restricted to access the fee-based web pages, such as to purchase exercise profiles, exercise equipment, and the like}.

As for claims 54-55, Watterson et al. discloses the method, further including accessing a virtual private network in scheduling an exercise session, through a web browser interface, the scheduling including selecting a location, a date, and time a future exercise routine is to be accomplished; and configuring web viewing through the

web browser interface, including: configuring screens of the web browser, said web browser interface stored on the second exercise machine; and selecting types of content to be viewed while exercising (col. 40, lines 9-16) {in one alternate embodiment, calendaring module 384 is linked with private room 394 such that upon scheduling a one-on-one exercise program, a private room is automatically scheduled for the user. Additionally, calendaring module 384 may automatically send a message to the users mailbox, thereby providing the user with information regarding the particular private room scheduled and a reminder of the schedule time}; and (col. 10, lines 17-31 and FIG. 6) {by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases}.

As for claim 57, Watterson et al. disclose the method of claim 6, further including the step of forming a client profile database containing a profile for each user, said client profile separate from said user profile (col. 37, lines 33–44; FIGS 1 and 6) {if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92}.

As for claim 58, Watterson et al. disclose the method of claim 6, further including optionally viewing and configuring reports including intensity levels of the exercise routine and heart rate through a web browser interface and at a personal computer (col. 3, lines 50-57) {it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer}.

As for claim 59, Watterson et al. disclose the method of claim 58, further including the step of configuring web viewing through the web browser interface, including configuring screens of the web browser said web browser interface stored on the exercise equipment, and including selecting types of content to be viewed while exercising (col. 37, lines 33–44; FIGS 1 and 6) {if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92

As for claim 62, Watterson et al. disclose the method of claim 6, further including the step of optionally viewing and configuring reports including intensity levels of the exercise routine and heart rate through a web browser interface and at a personal computer Watterson et al. disclose the method of claim 15, further including the step of carrying out an on line purchase from the exercise machine while exercising (col. 35 lines 62-64) {information is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user}; and (col.38, lines 48-60 and FIG. 12) {communication module 254 may optionally include a consumer purchase module 310 which enables a user to make purchases online}.

As for claim 67, Watterson et al. disclose the method of claim 6, wherein the controlling includes controlling speed of the exercise machine with said machine-readable signals (col. 3, lines 50-57) {it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer}.

As for claim 69, Watterson et al. disclose the method of claim 6, further including computer enabled permission for another to form a group of users (col. 10, lines 32-39 and FIG. 6) {activation of the communication system 18 enables exercise devices to have the potential of being controlled during an exercise program by a third party}; and (col. 39, lines 43-45 and FIG. 16) {in one embodiment, as a third party controls the operation of the exercise devices, the trainer can communicate motivational messages to the trainee users. Watterson et al. further disclose that each user and/ or trainer may save unique exercise programs created by the user and/or trainer within data storage 390 accessible by mailbox module 386}.

As for claims 72-73, the fact of accepting a gym registration application over the network obtaining, is nonfunctional descriptive matter. It is not functional interrelated with the useful acts of the claimed invention and thus will not serve as limitation. The steps of forming machine-readable instructions to control the exercise machine in carrying out the personal exercise routine would be performed the same regardless of whether the equipment is in a gym or a home. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack, 703 F .2d 1381, 1385, 217 USPQ 401,404 (Fed Cir. 1983); In re Lowry, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).* Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the gym membership limitations because such data does not functionally relate to the steps in the method claimed and does not patentably distinguish the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> **(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.**

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. in view of Clem (Patent Number 6,527,674).

As for claim 4, Watterson et al. discloses that the step of storing the personal exercise routine includes a charge card number (col. 35, line 62-col. 36, line 8).

Watterson et al. does not disclose the method of claim 1 further including storing medical information. Clem discloses that the first plurality of information, may include, for example, a set of fitness goals for the user, at least one parameter (age, weight, sex, height, and medical conditions of the user) and includes all information entered by the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Watterson et al. to include the medical condition parameter of Clem to create a more personalized exercise routine for the user.

5. Claims 41-42, 65-66 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. (Patent Number 6,458,060).

As for claims 41-42, Watterson et al. do not disclose the method, further including formatting output at a display device at said exercise machine, said formatting including selectable enlarging the output; and formatting output at a display device at said second exercise machine, said formatting including selectably enlarging the output. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that an enlarged output is old and well-known type of display in the computer art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of Watterson et al. to include an enlarged output so that users could have a better view of the program profile.

As for claims 65-66, Watterson et al. disclose that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18, and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12 (col. 9, lines 41-46 and FIG. 6). Watterson et al. is silent about entering an indicator to find a gym to carry out the step of controlling, however, it would be obvious to one of ordinary skill in the art at the time the invention was made that if a user is inside a gym, the user would have to do this to this to find available exercise equipment.

As for claim 68, Watterson et al. is silent about setting a filter for at least one web subject matter or content in the profile, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made that a web filter was an old and well-known type of content controller in the computer art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exercise device of Watterson et al. to include the web filter to control web subject matter and content the users has access to.

6. Claims 12-13, 56 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. in view of Clem in further view of Mahoney et al. (Patent Number 5,502,806).

As for claims 12-13, 56 and 60 Watterson et al. discloses that login registration module 302 assists the user in defining a login user identification number and password that are unique to the particular user. Watterson et al. discloses that following the logging in procedure, the user is given access (col. 36, lines 9-33). Watterson et al. does not disclose swiping a credit card or smart card for access to the exercise equipment. Mahoney et al. is silent about using that the waiting line management system on exercise equipment. However, exercise equipment could be considered within the scope of this invention because Mahoney et al. discloses that the invention can be applied in any situation where the current demand for the delivery of a service or admission to a facility exceeds the current capacity. It would have been obvious to modify the exercise equipment of Watterson et al. to include the system of Mahoney et al. to provide faster access to the personalized exercise routine and also because the problem solved by Mahoney et al., waiting line management, would work the same on exercise equipment as theme park rides.

7. Claims 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. in view of Peterson et al. (Patent Number 6,052,512).

As for claims 63-64, Watterson et al. disclose that login-registration module 302 may track the particular locations where the user trains to identify a user profile of the user's exercise activities throughout the United States of America or the World, wherein such information may then be used to provide the user with specific information related to those locations where the user exercises most (col. 36, lines 61-66).

Watterson et al. does not disclose the step of inputting a gym membership, location of the gym, and a gym membership identification number into a profile. Peterson et al. disclose that subject equipment 2210 is a computer processor-controlled piece of exercise equipment such as an exercise bicycle, treadmill, stair-stepper, skier, or climber; and a user identifies herself by swiping a gym membership card with a magnetic strip or bar code through a card reader attached to subject equipment 2210; and compliance monitor 2102 receives an identification number retrieved from the card reader and recognizes the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Watterson et al. to include the feature of Peterson et al. in order to track the user's activity in order to send the user targeted advertising to exercise and non-exercise related businesses or services within the city or state of the place where the individual commonly visits or exercises (Watterson et al; col. 36, lines 67 to col. 37, line 3).

8. Claims 74-75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. in view of Netpulse.com.

As for claims 74-75, Watterson et al. does not disclose the step of managing a gym membership, tracking fees of gym users, and issuing invoices. Netpulse.com discloses that Netpulse Communications manages a network of Internet-connected exercise machines in fitness centers around the country (Page 2); and Netpulse.com further discloses that the company's Netpulse Network is also becoming a valuable advertising, merchandising, and direct marketing tool for consumer product companies who want to reach an attractive demographic at the point of sweat. Netpulse.com does not expressly teach tracking fees of gym users, and issuing invoices, however, it is old and well known in the business industry that tracking and billing techniques are used where goods and services are provided on to customers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Watterson et al. and Netpulse to include the tracking and billing feature in order to charge users for equipment and Internet usage.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure.

1) Ogawa (Patent Number 6,634,992), which discloses a training machine, image output processing device and method, and recording medium which stores image outputting programs.

2) Cohen et al. (Patent Number 6,971,973), which disclose a custom content delivery for networked exercise equipment.

3) Pfeffer (Patent Number 6,635,013), which discloses a fitness triage system and exercise gets personal.

4) Cohen et al. (Patent Number 6,827,669), which disclose reliability system for networked exercise equipment.

5) Peterson et al. (Patent Number 6,052,512), which disclose migration mechanism for user data from one client computer to another.

6) Abelbeck et al. (Patent Number 6,656,091), which disclose which an exercise device control and billing system.

7) Powers (Patent Number 5,836,770), which discloses a multimedia product for use in physical fitness training and method of making.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 03/03/2006

Freda Nelson

JOHN W. HAYES
SUPERVISORY PATENT EXAMINER